

United States District Court  
Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

LURENZO LEE WILLIAMS,

Plaintiff,

v.

DR. G. KALISHER, et al.,

Defendants.

Case No. 15-cv-03068 NC (PR)

**ORDER GRANTING  
DEFENDANTS' MOTION FOR  
SUMMARY JUDGMENT**

Re: Dkt. No. 36

Plaintiff Lorenzo Lee Williams, a California state prisoner proceeding *pro se*, filed a civil rights complaint under 42 U.S.C. § 1983, alleging that Defendants were deliberately indifferent to his serious medical needs. Defendants have filed a motion for summary judgment. Plaintiff has filed an opposition, and Defendants have filed a reply. For the reasons stated below, the Court GRANTS Defendants' motion for summary judgment.

**BACKGROUND**

The following facts are taken in the light most favorable to Plaintiff, and are

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1 undisputed unless otherwise indicated.

2 Plaintiff arrived at Correctional Training Facility (“CTF”) from Salinas Valley State  
3 Prison on May 28, 2014. Am. Compl. ¶ 1; Bright Decl. ¶ 5. Prior to that time, Plaintiff  
4 had been diagnosed as a chronic care inmate with osteoporosis in both legs and feet. Am.  
5 Compl. ¶ 1. On July 1, 2014, Plaintiff met with Defendant Dr. G. Kalisher and informed  
6 Dr. Kalisher that Plaintiff had been approved to be placed back on morphine for pain. Am.  
7 Compl. ¶ 1; Bright Decl. ¶ 7. Despite seeing documentary evidence supporting Plaintiff’s  
8 assertion, Dr. Kalisher informed Plaintiff that she would not prescribe any medication until  
9 Plaintiff received an x-ray and obtained lab tests. Am. Compl. ¶ 1. If the x-rays came  
10 back “positive,” Dr. Kalisher would prescribe morphine for Plaintiff. *Id.* Dr. Kalisher  
11 ordered x-rays of Plaintiff’s left hip, lumbosacral spine, and legs. Bright Decl. ¶ 7.

12 Plaintiff claims that the x-ray results revealed multiple fractures and arthritis in his  
13 lower back. Am. Compl. ¶ 2. However, according to Defendants and documentary  
14 evidence, the left hip x-rays showed no acute fracture, and minimal left hip joint arthritis.  
15 Bright Decl. ¶ 7, Ex. A at A-10. The spinal x-ray showed mild degenerative disc disease.  
16 Bright Decl. ¶ 7, Ex. A-11.

17 Plaintiff saw Dr. Kalisher on September 30, 2014 for a chronic care appointment.  
18 Bright Decl. ¶ 9. Dr. Kalisher reviewed the results of Plaintiff’s blood test and x-rays with  
19 Plaintiff, and told Plaintiff that she felt that his arthritis was in a “mild stage,” and she  
20 would not prescribe any narcotics until Plaintiff’s medical condition became critical. Am.  
21 Compl. ¶ 2. Dr. Kalisher explained to Plaintiff that he had degenerative disc disease,  
22 which was a term to describe the normal and gradual changes that occur in an individual’s  
23 spinal discs over time. Bright Decl. ¶ 9, Ex. B at B-004. Dr. Kalisher offered Plaintiff  
24 Elavil instead, which is a psychotropic medication. Am. Compl. ¶ 2. Plaintiff explained to  
25 Dr. Kalisher that he did not want a psychotropic medication for pain, and that he had taken

1 Elavil before and it had given him bad side effects and an allergic reaction. *Id.*

2 Plaintiff requested an MRI to determine the damage to Plaintiff’s tissue and  
3 cartilage, but Dr. Kalisher felt that Plaintiff’s medical condition did not warrant an MRI.  
4 Am. Compl. ¶ 3. Defendants Dr. Bright and Deputy Director Lewis also rejected  
5 Plaintiff’s appeals for morphine and further testing. Am. Compl. ¶ 4.

6 Plaintiff claims that Defendants deliberately failed to provide adequate pain  
7 medication, and denied an MRI or further testing, knowing that Plaintiff faced a substantial  
8 risk of serious harm.

9  
10 **DISCUSSION**

11 A. Standard of Review

12 Summary judgment is proper where the pleadings, discovery, and affidavits show  
13 there is “no genuine dispute as to any material fact and the movant is entitled to judgment  
14 as a matter of law.” *See* Fed. R. Civ. P. 56(a). Material facts are those that may affect the  
15 outcome of the case. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A  
16 dispute as to a material fact is genuine if the evidence is such that a reasonable jury could  
17 return a verdict for the nonmoving party. *See id.*

18 A court shall grant summary judgment “against a party who fails to make a showing  
19 sufficient to establish the existence of an element essential to that party’s case, and on  
20 which that party will bear the burden of proof at trial[,] . . . since a complete failure of  
21 proof concerning an essential element of the nonmoving party’s case necessarily renders  
22 all other facts immaterial.” *See Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986).  
23 The moving party bears the initial burden of identifying those portions of the record that  
24 demonstrate the absence of a genuine issue of material fact. *Id.* The burden then shifts to  
25 the nonmoving party to “go beyond the pleadings and by [his] own affidavits, or by the

1 'depositions, answers to interrogatories, and admissions on file,' designate 'specific facts  
2 showing that there is a genuine issue for trial.'" *See id.* at 324 (citing Fed. R. Civ. P.  
3 56(e)).

4 For purposes of summary judgment, the court must view the evidence in the light  
5 most favorable to the nonmoving party; if the evidence produced by the moving party  
6 conflicts with evidence produced by the nonmoving party, the court must assume the truth  
7 of the evidence submitted by the nonmoving party. *See Leslie v. Grupo ICA*, 198 F.3d  
8 1152, 1158 (9th Cir. 1999). The court's function on a summary judgment motion is not to  
9 make credibility determinations or weigh conflicting evidence with respect to a disputed  
10 material fact. *See T.W. Elec. Serv., Inc., v. Pac. Elec. Contractors Ass'n*, 809 F.2d 626,  
11 630 (9th Cir. 1987).

12 C. Analysis

13 Defendants move for summary judgment, arguing that the evidence is undisputed  
14 that the denial of morphine was not medically unacceptable, and the denial of an MRI was  
15 not medically unacceptable. Plaintiff opposes the motion, arguing that the facts  
16 demonstrated that Defendants acted with deliberate indifference to his serious medical  
17 needs.

18 Deliberate indifference to serious medical needs violates the Eighth Amendment's  
19 proscription against cruel and unusual punishment. *See Estelle v. Gamble*, 429 U.S. 97,  
20 104 (1976); *McGuckin v. Smith*, 974 F.2d 1050, 1059 (9th Cir. 1992), *overruled on other*  
21 *grounds, WMX Technologies, Inc. v. Miller*, 104 F.3d 1133, 1136 (9th Cir. 1997) (en  
22 banc). A determination of "deliberate indifference" involves an examination of two  
23 elements: the seriousness of the prisoner's medical need and the nature of the defendant's  
24 response to that need. *See McGuckin*, 974 F.2d at 1059.

25 Here, even assuming that plaintiff suffered from a "serious" medical need, there is

1 an absence of evidence that Defendants were deliberately indifferent to that need.

2 With respect to the denial of morphine or other narcotic pain medication, Plaintiff  
3 asserts that Dr. Kalisher should have offered another option aside from Elavil, and that  
4 Defendants' failure to do so was "cruel and unusual." Here, the undisputed evidence  
5 shows that just before Plaintiff saw Dr. Kalisher on July 1, 2014, Plaintiff was able to walk  
6 with a slow and steady gait. Bright Decl. ¶ 6. Dr. Kalisher did offer Elavil, but Plaintiff  
7 declined it. Plaintiff was instead prescribed the nonsteroidal anti-inflammatory drug  
8 ("NSAID"), naproxen, for the pain. *Id.* ¶ 7. In September 2014, Plaintiff again requested  
9 morphine, but was denied.

10 According to the California Correctional Health Care Services ("CCHCS")  
11 Guidelines, morphine is contraindicated in patients with no "objective evidence of severe  
12 disease or pathology;" that is, it is restricted to patients with objective evidence of severe  
13 disease. Bright Decl. ¶¶ 10-11; Pl. Opp. Ex. A at 4, 6. Plaintiff's medical records showed  
14 that Plaintiff was able to rise from a seated position, and could walk briskly. Bright Decl.  
15 ¶ 11. Plaintiff was offered non-narcotic pain medication, but refused NSAIDs. Bright  
16 Decl. ¶ 13. After Plaintiff fell off his top bunk in February 2015, Plaintiff was prescribed  
17 acetaminophen with codeine for pain management up until he was transferred from CTF in  
18 December 2015. *Id.*

19 Here, there is no evidence that Plaintiff's medical needs were treated with deliberate  
20 indifference by Dr. Kalisher. The record indicates that although Plaintiff did not receive  
21 morphine upon his request, Dr. Kalisher was responsive to Plaintiff's complaint of pain by  
22 ordering x-rays, scheduling a chronic care appointment, and offering alternative non-  
23 narcotic pain medication. Defendants refused Plaintiff's request for morphine because the  
24 CCHCS guidelines did not call for narcotic relief, and Defendants did not believe that  
25 morphine was medically necessary. It is well-established that "[a] difference of opinion

1 between a prisoner-patient and prison medical authorities regarding treatment does not  
2 give rise to a § 1983 claim.” *Franklin v. Oregon*, 662 F.2d 1337, 1344 (9th Cir. 1981).  
3 Plaintiff’s claim that he should have received prescription narcotics for pain is the type of  
4 difference in medical opinion between a lay prisoner and medical personnel that is  
5 insufficient to establish a constitutional violation. *See Alford v. Gyaami*, No. 2:13-CV-  
6 2143 DAD P, 2015 WL 3488301, at \*10 n.3 (E.D. Cal. June 2, 2015) (noting that “in other  
7 contexts, courts within this circuit have consistently rejected a prisoner’s attempt to dictate  
8 the terms of their pain medication”) (citing cases).

9       Regarding Plaintiff claim that Defendants should have ordered an MRI or further  
10 testing, Plaintiff provides no evidence to suggest that the denial of an MRI amounted to  
11 deliberate indifference to his serious medical needs. The evidence is undisputed that the  
12 MRI was denied because it was not medically necessary. Plaintiff’s x-rays in 2014  
13 showed no fractures in his hip, minimal left hip joint arthritis, and mild degenerative disc  
14 disease. There is an absence of evidence that Defendants failed to order an MRI or other  
15 additional testing, knowing that without such testing, Plaintiff faced a substantial risk of  
16 serious harm. *See Farmer*, 511 U.S. at 837. No evidence has been presented to show that  
17 Defendants’ failure to order further testing resulted in further harm to Plaintiff. *See*  
18 *McGuckin*, 974 F.2d at 1060 (requiring a showing of a purposeful act and resulting harm in  
19 order to establish deliberate indifference).

20       In addition, there is nothing in the record to suggest that additional testing would  
21 have altered Defendants’ medical treatment of Plaintiff’s pain. Such decisions are  
22 squarely matters of medical judgment. *See Estelle v. Gamble*, 429 U.S. 97, 107 (1976)  
23 (“[T]he question whether an X-ray or additional diagnostic techniques or forms of  
24 treatment is indicated is a classic example of a matter for medical judgment. A medical  
25 decision not to order an X-ray, or like measures, does not represent cruel and unusual

1 punishment. At most it is medical malpractice, and as such the proper forum is the state  
2 court.”). Nor has Plaintiff raised a triable issue of fact that Defendants’ course of  
3 treatment was medically unacceptable under the circumstances or that they chose this  
4 course in conscious disregard of an excessive risk to Plaintiff’s health. *See Toguchi v.*  
5 *Chung*, 391 F.3d 1051, 1058-60 (9th Cir. 2004).

6 Viewing the record in the light most favorable to Plaintiff, he has failed, as a matter  
7 of law, to raise a genuine issue of fact as to whether Defendants were deliberately  
8 indifferent to his serious medical needs. Defendants’ motion for summary judgment is  
9 GRANTED.

10  
11 **CONCLUSION**

12 Defendants’ motion for summary judgment is GRANTED. The Clerk shall  
13 terminate all pending motions, enter judgment, and close the file.

14  
15 **IT IS SO ORDERED.**

16 DATED: August 11, 2017



17 NATHANAEL M. COUSINS  
18 United States Magistrate Judge